

Crystal Ann Realty, Inc. v BNH Partners, LLC

2023 NY Slip Op 30054(U)

January 9, 2023

Supreme Court, New York County

Docket Number: Index No. 155979/2022

Judge: Suzanne Adams

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. SUZANNE ADAMS PART 39TR

Justice

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CRYSTAL ANN REALTY, INC.,

Plaintiff,

- v -

BNH PARTNERS, LLC, PAUL GANJIAN, BUBBLE POP LAUNDROMAT, INC.

Defendant.

-----X

INDEX NO. 155979/2022

MOTION DATE N/A

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 6, 7, 8, 9, 10, 11, 12, 13, 14

were read on this motion to/for JUDGMENT - DEFAULT

Upon the foregoing documents, it is ordered that plaintiff's motion is granted on default. Plaintiff is the owner of property located at located at 343 E. 115th Street, New York, New York, which abuts the property owned by defendant BNH Partners, LLC ("BNH"). Plaintiff alleges that defendants, without plaintiff's knowledge or consent, encroached upon the property with a structure made out of cinderblocks and have ignored plaintiff's requests to remove said encroachment. Plaintiff now moves against defendants Bubble Pop Laundromat, Inc. ("Bubble Pop") and BNH for default judgment pursuant to CPLR § 3215, and pursuant to RPAPL § 871 declaring that said defendants are currently trespassing on plaintiff's aforesaid real property and directing defendants to remove the encroachment at issue from the property. Plaintiff also seeks monetary damages. Defendants have not answered or otherwise moved in this action or submitted opposition to this motion.

Under RPAPL § 871, “An action may be maintained by the owner of any legal estate in land for an injunction directing the removal of a structure encroaching on such land. Nothing herein contained shall be construed as limiting the power of the court in such an action to award damages in an appropriate case in lieu of an injunction or to render such other judgment as the facts may justify”. To prevail on a cause of action for ejectment, a plaintiff must establish that “(1) it is the owner of an estate in tangible real property, (2) with a present or immediate right to possession thereof, and (3) the defendant is in present possession of the estate”. *Noamex, Inc. v Domsey Worldwide, Ltd.*, 198 A.D.3d 817,819. In order to obtain injunctive relief pursuant to RPAPL 871, a party is “required to demonstrate not only the existence of [an encroachment], but that the benefit to be gained by compelling its removal would outweigh the harm that would result to the [the encroaching party] from granting such relief”. *Kimball v. Bay Ride United Methodist Church*, 157 A.D. 3d. 877. 878.

The moving affidavit of James J. Pisacanno, an officer of plaintiff, states that plaintiff exclusively owns the property and further details defendants’ encroachment upon plaintiff’s use and enjoyment of its own property and annexes proof as to its ownership. Defendants have not submitted opposition to the relief requested on this motion. As such, plaintiff’s motion is granted, on default.

Accordingly, it is hereby

ORDERED that plaintiff’s motion for an order granting default judgment against defendants Bubble Pop Laundromat, Inc. and BNH Partners, LLC, is granted, on default; and it is further

ORDERED, ADJUDGED and DECREED that defendants Bubble Pop Laundromat, Inc. and BNH Partners, LLC are currently trespassing on plaintiff's real property known as and located at 343 E 115th Street, New York, New York; and it is further

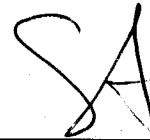
ORDERED, ADJUDGED and DECREED that defendants Bubble Pop Laundromat, Inc. and BNH Partners, LLC shall remove a frame shed with concrete cinderblocks, and a deck atop the concrete cinderblocks (the "Encroachment"), to the extent that the Encroachment encroaches onto plaintiff's property, and shall be enjoined and restrained from trespassing on plaintiff's property (except to the extent necessary to remove the Encroachment); and it is further

ORDERED, ADJUDGED and DECREED that if defendants do not remove the Encroachment within 45 days of the date of entry of this order, then plaintiff itself may remove the Encroachment, and in such an event shall be awarded the expense incurred in said removal; and it is further

ORDERED that the amount of plaintiff's damages resulting from the Encroachment and any costs incurred in plaintiff's removing the structure to be assessed as against defendants is referred for determination to a Special Referee, and that within 60 days from the date of this order plaintiff shall cause a copy of this order with notice of entry, including proof of service thereof, to be filed with the Special Referee clerk (Room 119M, 646-386-3028 or spref@nycourts.gov) to arrange a date for a reference to determine pursuant to CPLR § 4317(b); and it is further

ORDERED that pursuant to pursuant to CPLR § 3215(b) the Clerk is directed to enter judgment in favor of plaintiff Crystal Ann Realty, Inc., and against defendants Bubble Pop Laundromat, Inc. and BNH Partners, LLC in accordance with the report of the aforementioned Special Referee without any further application.

This constitutes the decision and order of the court.



1/9/2023
DATE

SUZANNE ADAMS, J.S.C.

CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	OTHER
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED	<input type="checkbox"/>	
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER	<input type="checkbox"/>	
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE